IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

MFA.No. 112 of 1999()

OPMV.1255/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA
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APPELLANT/3rd RESPONDENT:

THE NEW INDIA ASSURANCE CO.LTD.,
POLLACHI NOW REPRESENTED BY THE
DEPUTY MANAGER, REGIONAL OFFICE,
M.G.ROAD, KOCHI- 682 011.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS:PETITIONER AND RESPONDENTS 1 & 2:
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1. **MOST REV. BENEDICT MAR GREGORIOUS,**
   ARCH BISHOP OF TRIVANDRUM, PATTOM PALACE P.O.,
   TRIVANDRUM-4. REP. BY POWER OF ATTORNEY HOLDER
   C.P.CHACKO, ARCH BISHOP'S HOUSE, PATTOM PALACE P.O.,
   TRIVANDRUM.

2. **ALLAPPAN SELVARAJ, RAJAVIN ROAD, POLLACHY TOWN,**
   COIMBATORE DISTRICT, TAMIL NADU.

3. **S. NATARAJAN, S/o.SUBHAIAH GOWDAH 70,**
   SUBHAYYA PILLAI STREET, COIMBATORE,
   TAMIL NADU.

R1 BY ADV. SRI.R.KRISHNA RAJ

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.No.657/1999 IN M.F.A.No.112/1999

DISMISSED

09.10.2007 Sd/- K.PADMANABHAN NAIR,JUDGE

TRUE COPY

P.A.TO JUDGE

K.PADMANABHAN NAIR, J.

M.F.A NO.112 OF 1999

Dated this the 9th day of October, 2007

J U D G M E N T

The appellant is the 3rd respondent-Insurer in O.P(MV) 1255/1992 on the file of the Motor Accidents Claims Tribunal, Alappuzha. The appeal is filed against an award passed by the Tribunal by which it directed the appellant to pay an amount of Rs.1,00,000/- as compensation to the 1st respondent for the damages sustained to the property. 1st respondent is the owner of the Benz car bearing registration No. KLF 59 . The collision of the car with a Lorry bearing registration No. MDN 7723 took place on 3.5.92 causing damages to the car. The driver of the car also sustained injuries. The 1st respondent, owner of the car filed the original petition claiming damages to the tune of Rs.1,00,000/-. The driver filed O.P(MV) 1256/1992 claiming compensation for the injuries sustained by him. According to the petitioners, the accident occurred due to the rash or negligent driving of the lorry by its driver. The appellant, who is the insurer of the lorry, alone contested. The owner and driver remained ex parte. The appellant contended that the compensation claimed was highly excessive and as the policy issued

to the goods vehicle was an Act only policy and under that policy, the liability of the insurer is limited to Rs.6,000/-. It is also contended that the driver of the lorry was not having any valid driving licence.

2. Both the original petitions were consolidated together and disposed of by a common award. The Tribunal found that the accident occurred due to the negligence of the driver of the lorry. The entire amount of Rs.1,00,000/- claimed as compensation was awarded in O.P(MV) 1255/1992. The driver of the car who had sustained injuries was awarded an amount of Rs.12,750/- as compensation.

3. The insurer has filed this appeal challenging the award passed in O.P(MV) 1255/1992. Learned counsel appearing for the insurer has argued that the finding of the Tribunal that the insurer is liable to pay the entire compensation is illegal and liable to be set aside.

4. In this particular case, the insurer is not challenging the quantum of compensation awarded. The dispute is only with regard to its liability. Ext.B1 is the copy of the policy, which shows that it was an Act only policy. In fact the specific contention raised by the insurer before the Tribunal also was that it was an Act only policy and

hence its liability is limited as provided under Section 147 of the Motor Vehicles Act. Under Section 147 (2) (b) the liability in respect of damage to any property of a third party, there is a limit of Rs.6,000/-. The only reason stated by the Tribunal was that in this case the company has received higher premium of Rs.1,275/-. It is not discernible from the judgment as to how the Tribunal came to the conclusion that Rs.1,275/- is a higher premium. The petitioner has not given any evidence as to what exactly is the tariff payable by the insured in an Act only policy for Lorry, which is being used as goods vehicle. So, the Tribunal was not justified in holding that in this case the owner of the goods vehicle have paid higher premium. Learned counsel appearing for the appellant produced the Indian Motor Tariffs, which is effective from 1.8.89. It shows that the amount that is to be paid as premium for an Act only policy if the gross weight of the vehicle exceeds 12,000 kilo grams is Rs.1,245/-. It also shows that as per the commercial vehicle's tariff to get extra benefit the owner can pay an amount of Rs.15/- per capita for the driver, cleaner or other workers subject to maximum 6. In this case, the owner has paid Rs.30/- more and it was the premium paid for cover the driver and cleaner. So the reasoning of the Tribunal that the premium paid

is more than the statutory amount itself is without any factual foundation and is liable to be set aside. In this case, the liability of the appellant is only Rs.6,000/-. So the appeal has to be allowed.

In the result, the appeal is allowed in part. The finding of the Tribunal that the appellant shall pay the entire amount of Rs.1,00,000/- is hereby set aside. The decree is modified. The liability of the appellant is only Rs.6,000/- with interest as ordered by the court below. The balance amount can be recovered from the owner and driver of the vehicle.

K.PADMANABHAN NAIR, JUDGE

vps

K.PADMANABHAN NAIR, J.

M.F.A. NO.112 OF 1999

JUDGMENT

9th day of October, 2007